



MULTISTATE TAX COMMISSION

**MINUTES of
Uniformity Committee Meeting
Wednesday, March 6, 2013
1:00 p.m. Central Time**

I. Welcome and Introductions

Wood Miller (ID), Chair of the Uniformity Committee, opened the meeting. The following persons were in attendance:

Shirley Sicilian, Roxanne Bland, Sheldon Laskin, Thomas Shimkin, Ken Beier, Lila Disque	Multistate Tax Commission	Derek Bell	Montana Department of Revenue
Richard Cram, Bryan Vargas	Kansas Department of Revenue	Michael Fatale	Massachusetts Department of Revenue
Frank Hales	Utah State Tax Commission	Lennie Collins	North Carolina Department of Revenue
Louis Joe Gomez	New Mexico Taxation and Revenue Department	Phil Horwitz	Colorado Department of Revenue
Jeff Vogt	Minnesota Department of Revenue	Nancy Prosser	Texas Comptroller of Public Accounts
Stewart Binke	Michigan Department of Treasury	Derek Love	Baker & McKenzie
Chris Coffman	Washington State Department of Revenue	Ferdinand Hogroian	Council on State Taxation
Randy Tilley, Phil Skinner	Idaho State Tax Commission	Deborah Bierbaum	AT&T

Wood Miller	Missouri State Tax Commission	Todd Lard	Sutherland
Christy Edwards, Kelly Gilliken, Mike Gamble, Christy Vandevender, Craig Banks, Chris Sherlock	Alabama Department of Revenue	John Blase	Attorney
Aaishah Hashmii	District of Columbia Office of Tax and Revenue	Terry Fredericks	Sprint
Robynn Wilson	Alaska Department of Revenue	Karen Boucher	Deloitte Tax LLP
Appearing by Phone			
Andrew Glancy	West Virginia State Tax Department	Walter Anger	Arkansas Department of Finance and Administration
Nancy Prosser	Texas Comptroller of Public Accounts	Matt Peyrl	North Dakota Office of State Tax Commissioner
Gary Humphrey	Oregon Department of Revenue		

II. Approval of Minutes of In-person meeting December 5, 2012

There were no changes or corrections. Phil Horwitz (CO) moved to approve the minutes. The motion passed by voice vote.

III. Public Comment Period

There were no public comments at this time.

IV. Reports and Possible Action

Sales/Use Tax Segment

Richard Cram (KS), Chair of the Sales and Use Tax Subcommittee, introduced this segment. The Subcommittee met directly before the Uniformity Committee meeting. There were no action items to move forward to the full uniformity Committee, but it did continue work on its two projects, the model nexus statute project and the model provision concerning class acts and false claims. Regarding the Model Provisions Concerning Class Actions and False Claims, the Subcommittee will look to more fully develop the issues, and would like to move forward on the project. The Subcommittee identified some areas on both projects that need additional research.

Income/franchise tax segment

Robynn Wilson (AK), Chair of the Income and Franchise Tax Subcommittee presented the report. The Subcommittee met twice; once by phone and then in person on March 5 ,2013. In February, the Subcommittee discussed two issues: the possible § 482 project (for which the Committee asked for a list of existing statutes and regulations) and the Model Statute For Partnership or Pass-Through Income. The second had gone to the Executive Committee and was returned to the Subcommittee for further drafting. There were two areas of concern to the insurance industry, and the Subcommittee voted to pass Mr. Fatale's recommendations on to the Committee. At the March 5 meeting, the Subcommittee discussed the Financial Institution Apportionment Rule. Sheldon Laskin, MTC counsel, presented a detailed report from the work group. Karen Boucher commented on the memo and a discussion ensued as to whether the work group should take another look at the property factor. The Subcommittee resolved to ask the work group to look into it further. It then discussed process improvement – the Subcommittee had previously asked MTC staff to look at a potential reorganization of the uniformity website. Shirley Sicilian, MTC General Counsel, and Lila Disque, MTC Counsel, presented a comprehensive example of how the new website could look and function. There would be a "history" on each completed model, as well as a dashboard reflecting the status of pending projects. Mr. Fort then presented the revised staff memo on the possible § 482 project, which included a summary of relevant statutes and regulations. Ferdinand Hogroain from the Council on State Taxation presented comments, as did the Tax executives Institute, which submitted comments in writing. The Subcommittee, after due consideration, voted to cease work on the § 482 project.

V. Model Statute for Partnership or Pass-Through Entity Income Ultimately Realized By an Entity That Is Not Subject to Income Tax

Previously, via teleconference, the Subcommittee voted to recommend the revised draft Model Statute for Partnership or Pass-Through Entity Income (attached to the agenda) be adopted, as revised by Michael Fatale (MA). Those provisions comprise the last two paragraphs at the bottom of the page. Mr. Fatale explained his revisions: the Executive Committee felt it would be good to address specific concerns set forth by the insurance industry. Specifically, the proposal should address activities that insurance companies have historically performed directly that might be placed into the context of an LLC below the company. Things like claims function or investments might plausibly be shifted into an LLC -- possibly for liability protection. The idea was that if either of those structures was used, it shouldn't be the case that those receipts should be subject to state tax. At the main meeting, Bruce Johnson suggested the insurance representatives draft some proposed language. They did not do so, so Mr. Fatale drafted language to address their concerns. The language is a potential optional add-on to the proposed regulation (this was the recommended approach). The Subcommittee voted on February 5, 2013, to adopt the revisions and recommend them to the Uniformity Committee.

Mr. Miller suggested, regarding the first proposal, that a "traditional function" like administration of claims might be phrased as the only exception. As written now, there is one enumerated exception. Mr. Fatale stated the example used was one the insurance representatives outlined. He would not be uncomfortable making it narrower, but reminded those in attendance that it remains an optional provision. Phil Horwitz (CO) saw no need to limit it further, because there is no risk that a third party that generates income could be swept in. so he feels it is already quite narrow and would be hard to abuse. Mr. Ferdinand Hogroain, on behalf of the Council on State Taxation, reiterated the trade comments that were submitted. They reflected that there were

already tools to deal with any perceived tax avoidance and the industry is highly regulated as it is. He also believed there could be unforeseen consequences as far as retaliatory taxes.

There were no further questions or comments. Mr. Horwitz moved to readopt the proposed Model Statute Regarding Partnership or Pass-Through Income That Is Ultimately Realized by an Entity Not Subject to Income Tax and move it to the Executive Committee. There was a vote by show of hands -- eleven ayes, none opposed. A voice vote for the phone participants yielded four ayes, none opposed. There were two abstentions. The motion carried.

VI. Roundtable discussion

Members of the Subcommittee shared updates on legal, judicial, legislative, and regulatory developments in their states.

VII. New business

Joe Huddleston welcomed the new Director of Revenue of Missouri to his new position.

VIII. Adjourn

The Committee adjourned on motion duly made.